

Exhibit E

Memorandum of Agreement

**EXHIBIT E**

Recording Requested by:

*Sunnyvale Redevelopment Agency*

When Recorded Mail to:

**Agency General Counsel  
Office of Sunnyvale City Attorney  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, CA 94086**

**DOCUMENT WILL BE RETURNED TO  
NAME & ADDRESS IDENTIFIED ABOVE**

No fee for recording per Government Code § 27383

(Above Space for Recorder's Use Only)

**MEMORANDUM OF 2010 AMENDED DISPOSITION AND DEVELOPMENT AND  
OWNER PARTICIPATION AGREEMENT**

THE SUNNYVALE REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency") and L. GERALD HUNT, as Receiver in the matter of Wachovia Bank v. Downtown Sunnyvale Residential, et al., Santa Clara Superior Court Case No. 109-CV-153447 ("Receiver"), have entered into that certain 2010 Amended Disposition and Development and Owner Participation Agreement (the "2010 ADDOPA") concerning the redevelopment of the Sunnyvale Town Center property situated in the City of Sunnyvale, County of Santa Clara, State of California, more particularly described in Exhibit A attached hereto (the "Project").

The 2010 ADDOPA amends in its entirety the rights and obligations of the parties to the Amended and Restated Disposition and Development Agreement and Owner Participation Agreement, a memorandum of which was recorded as Document No. 19602163 on October 1, 2007 in the records of the Santa Clara County Recorder (the "Official Records") and implements the 2010 Modification Agreement to the Amended and Restated Disposition and Development and Owner Participation Agreement, a memorandum of which was recorded as Document No. 20717738 on May 20, 2010 in the Official Records), including but not limited to:

1. Developer's obligations to construct and the timing of construction of the Project.
2. The Agency's obligation to release tax increment funds to the Developer upon completion of certain portions of the Project.
3. Developer's ability to and criteria for the transfer of all or portions of the property within the Project.
4. Allocation of responsibility among the Developer and the Agency for Environmental Costs.
5. An obligation to refrain from discrimination on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the conveyance, leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Project.
6. A prohibition on transfers of the property within the Project which will result in the Project being exempt from property tax.
7. An obligation to participate in certain downtown Sunnyvale activities.
8. An obligation to obtain the consent of the Agency for certain transfers of the property within the Project.
9. An obligation to permit the Agency or City of Sunnyvale to make use of certain plazas in the Project.
10. An obligation to provide certain levels of security for the Project.
11. A right on the part of the Agency to purchase the portion of the property within the Project owned by the Developer for the fair market value thereof in certain circumstances in the event that there is an uncured default or failure by the Developer under the 2010 ADDOPA prior to issuance of a certificate of completion.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

1. This Memorandum is recorded to provide constructive notice of the rights and obligations of Agency and Developer under the 2010 ADDOPA. All the terms and conditions of the 2010 ADDOPA are incorporated herein by reference as if fully set forth.
2. In the event of any conflict between the terms and conditions of the 2010 ADDOPA and this Memorandum, the terms of the 2010 ADDOPA shall control.
3. This Memorandum may be executed in counterparts, each of which shall constitute an original hereof, and all of which taken together shall constitute one and the same agreement.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum effective as of August \_\_, 2010.

"AGENCY"

SUNNYVALE REDEVELOPMENT  
AGENCY, a Public Body, Corporate  
and Politic

"RECEIVER"

L. Gerald Hunt, as Court-Appointed Receiver  
in Wachovia Bank v. Downtown Sunnyvale  
Residential, et al., Santa Clara Superior Court  
Case No. 109-CV-153447

By: \_\_\_\_\_  
Gary Luebbbers, Executive Director

By: \_\_\_\_\_  
Michael Parker  
Authorized Agent for the  
Receivership Estate

Approved As To Form

David E. Kahn, Agency General Counsel

Date: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)

**Exhibit A**  
**Legal Description**

All that certain real property situate in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

**Block 1**

- Lot 1, Block 1, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 2, Block 1, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 3, Block 1, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 4, Block 1, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

**Block 2**

- Lot 1, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 2, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 3, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 4, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 5, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 6, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.
- Lot 7, Block 2, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

**Block 3**

- Parcel B of a lot line adjustment recorded October 30, 2000 Series 20033369 Santa Clara County

**Block 4**

- Lot 2, Block 3, Tract 10007 entitled "Sunnyvale Town Center", filed October 29, 2008 in Book 828 of Maps at Pages 15 to 16 of the Official Records of Santa Clara County.
- Unit 2 of a Condominium Plan for Lot 1, Tract 10007 Recorded October 30, 2008 Series 20033370 Official Records of Santa Clara County.



**Block 5**

Lot 1, Block 5, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 2, Block 5, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 3, Block 5, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

**Block 6**

Lot 1, Block 6, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 2, Block 6, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 3, Block 6, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Lot 4, Block 6, Tract 9925 entitled "Sunnyvale Town Center", filed October 1, 2007 in Book 818 of Maps at Pages 47 to 55 of the Official Records of Santa Clara County.

Exhibit F

City/Agency Payment Agreement

## EXHIBIT F

### CITY/AGENCY PAYMENT AGREEMENT

This Agreement is made as of February 6, 2007 by and between the City of Sunnyvale ("City"), a charter city, and the Sunnyvale Redevelopment Agency ("Agency"), a public body corporate and politic, with reference to the following:

A. The Agency has entered into an Amended and Restated Disposition and Development and Owner Participation Agreement (the "DDOPA") with Downtown Sunnyvale Mixed Use, LLC ("Developer"). Pursuant to the DDOPA, Developer will develop, among other things, Public Parking Structures (as defined in the DDOPA) on the Public Parking Parcels (as defined in the DDOPA) owned by the Agency.

B. Concurrent with execution of this Agreement, the Agency has granted to the City an easement over the Public Parking Parcels (the "Public Parking Easement") that assures that those parcels and the Public Parking Structures will remain available for public parking.

C. In consideration for the Agency granting the Public Parking Easement to the City, the City desires to make certain payments to the Agency.

THEREFORE, the Agency and City agree as follows:

1. Payment Amount. Each year during the term of this Agreement the City shall pay to the Agency an amount equal to the Annual Payment as defined in the DDOPA (the "City Payment").
2. Timing of Payments. The City Payment shall be made in the manner and at the time specified in the Sections 8.01 and 8.02 for payment of the Annual Payment.
3. Term. The term of this Agreement shall extend for so long as there are amounts owing from the Agency to the City.
4. No Withholding. Notwithstanding any dispute between the Agency and the City, other than a dispute arising under Section 8 below as a result of which the City has concluded that it may not legally pay the City Payment in dispute, the City shall pay the City Payment when due and shall not withhold it pending the final resolution of such dispute. Notwithstanding the foregoing, if, pursuant to Section 8.04 of the DDOPA, the Agency concludes that the Annual Payment should be suspended, then the City Payment under this Agreement may likewise be suspended.
5. Fair Value. The City Payment shall be paid by the City in consideration of the right of the City to require the Public Parking Parcel and the Public Parking Structures to be used for public parking for each year for which the City Payment is paid. The parties hereto have agreed and determined that the total of the City Payments to be paid hereunder does not exceed the fair value of the benefits to the City during the term of this Agreement. In making such

determination, consideration has been given to the fair value of the Public Parking Parcels (including but not limited to costs of maintenance, taxes and insurance to be borne by the Developer), the uses and purposes which may be served by the Public Parking Parcels and the essential public benefits therefrom which will accrue to the City and the general public.

6. Budget and Appropriation. The City covenants to take such action as may be necessary to include the City Payments due hereunder in each of its proposed annual budgets and its final adopted annual budgets through the term of this Agreement and to make the necessary appropriations for the City Payments.

The obligation of the City to pay the City Payments hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City, or the State, or any political subdivision thereof, in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, the State, or any political subdivision thereof, nor shall anything contained herein constitute a pledge of general revenues, funds or moneys of the City or an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

7. Use and Possession. The City Payment due with respect to any fiscal year shall be for the use of the Public Parking Parcels for such fiscal year.

8. Abatement of Rent. Except to the extent that proceeds of the type described in the following paragraph are available, the City Payment shall be abated during any period in which there is substantial interference with the use of all or a portion of the Public Parking Structures by the public by condemnation, damage, destruction or title defect. The amount of such abatement shall be such that the resulting City Payment, exclusive of the amounts described in the following paragraph, does not exceed the fair value (as determined by one or more independent appraisers selected by the City, who are not employees of the City) for the use of the portion of the Public Parking Structures for which no substantial interference has occurred. The City shall calculate such abatement and shall provide the Agency with a certificate setting forth such calculation and the basis therefore. Such abatement shall continue for the period of the substantial interference with the use or possession of the Public Parking Structures. Except as provided herein, in the event of any such interference with use or possession, this Agreement shall continue in full force and effect and the City waives any right to terminate this Agreement by virtue of any such interference.

Notwithstanding a substantial interference with the use or possession of all or a portion of the Public Parking Structures, the City shall remain obligated to pay the City Payment (i) in an amount not to exceed the fair value during each fiscal year for the portion of the Public Parking Structures not damaged, destroyed, interfered with or taken, as determined by an independent real estate appraiser selected by the City (who is not an employee of the City); or (ii) to the extent that moneys derived from any person as a result of any delay in the construction, reconstruction, replacement or repair of the Public Parking Structures, or any portion thereof, are available to pay the amount which would otherwise be abated. The City shall use its best efforts to provide sufficient funds in order to ensure completion of the reconstruction, repair, restoration,

modification or improvement of the Public Parking Structures and pending such reconstruction, repair, restoration, modification or improvement of the Public Parking Structures.

9. Events of Default Defined. The following shall be "events of default" under this Agreement and the terms "events of default" and "default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Payment Default. Failure by the City to pay the City Payment required to be paid hereunder on the date such payments are due hereunder.

(b) Covenant Default. Failure by the City to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto, other than as referred to in clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Agency; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, then no event of default shall have occurred so long as corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected.

(c) Bankruptcy or Insolvency. The filing by the City of a case in bankruptcy, or the subjection of any right or interest of the City under this Agreement, any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

10. Remedies on Default. Whenever any event of default referred to in Section 9 hereof shall have happened and be continuing, Agency, or its assignee, may exercise any and all remedies available pursuant to law or granted pursuant to this Agreement; provided, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO ACCELERATE THE CITY PAYMENT OR OTHERWISE DECLARE ANY CITY PAYMENT NOT THEN DUE OR PAST DUE TO BE IMMEDIATELY DUE AND PAYABLE.

No remedy conferred herein upon or reserved to the Agency is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

11. Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

12. Notices. All notices, certificates or other communications hereunder to the Agency and City shall be in writing and shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage pre-paid, return receipt requested, delivered personally, or sent by reputable overnight service or sent by facsimile transmission with a copy mailed by first class United States mail to the principal office of the City and the Agency as follows:

If to the City: City of Sunnyvale  
456 West Olive Avenue  
P.O. Box 3707  
Sunnyvale, CA 94088-3707  
Attn: City Manager  
Phone: (408) 730-7480  
Fax: (408) 730-7699

If to the Agency: Sunnyvale Redevelopment Agency  
456 West Olive Avenue  
P.O. Box 3707  
Sunnyvale, CA 94088-3707  
Attention: Executive Director  
Phone: (408) 730-7480  
Fax: (408) 730-7699

The City and the Agency, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

13. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency and the City and their respective successors and assigns.

14. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

15. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

16. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

17. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

18. Further Assurances and Corrective Instruments. The Agency and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed,

acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Agreement.

19. Right to Terminate Agreement. Notwithstanding anything to the contrary in this Agreement, the City and Agency shall not terminate this Agreement prior to the end of the term without consent of the Developer (as such term is defined in the DDOPA) pursuant to the DDOPA.

IN WITNESS WHEREOF, the Agency has caused this Agreement to be executed in its name by its duly authorized officers, and the City has caused this Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

SUNNYVALE REDEVELOPMENT AGENCY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM

\_\_\_\_\_  
Agency Counsel

CITY OF SUNNYVALE

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney



## Exhibit G

### Feed and Charges Estimate

# Exhibit G

## Fees and Charges Estimates for Fiscal Year 2006-2007

(Project Description of 275,000 s.f. of Office, 991,761 s.f. of Retail, 292 Housing Units)

Tentative Map Application Fee	\$3,418 per map, flat rate	n.a.
Tentative Map Application Fee	\$235 x lots	n.a.
Public Art Review Application Fee	\$2,158	\$2,158
Below Market Rate Units	12.50%	
SDP + Plan Review	per application \$4,113.	\$12,339
Master Sign Program	\$625	\$625
	<b>Subtotal</b>	<b>\$15,122</b>
Park In Lieu	per unit \$7,938.81	\$2,318,133
Citywide Traffic Impact Fee	varies by use	\$1,941,350
School Fee Commercial SSD and FUHSD <sup>1</sup>		\$698,270
School Fee Residential SSD and FUHSD <sup>1</sup>		\$863,692
	<b>Subtotal</b>	<b>\$5,821,444</b>
Building Permit		\$1,155,242
Construction Tax	0.54% of valuation	\$1,074,950
Plan Check	70% of building permit fee	\$808,669
Energy	10% of building permit fee	\$115,524
Grading	2% building permit fee	\$23,105
Plumbing	\$.12 x sq. feet	\$358,201
Mechanical	\$.12 x sq. feet	\$358,201
Electrical	\$.12 x sq. feet	\$808,669
Fire Prevention	70% of building permit fee	\$358,201
General Plan Maintenance Fee	0.05% construction valuation	\$99,532
	<b>Subtotal <sup>1,2,3</sup></b>	<b>\$5,160,294</b>
Public Art Required in Project	1% construction valuation	
<b>Group 1</b>		
Application, Plan Check, Permit, Inspection Fees	Rate	
Final Map Base Rate	\$3,000.00	\$3,000
Final Map per lot	\$40.00	\$840
Improvement Plan Check + Permit + Inspection (High Complexity-approx 15%)	\$10,000,000.00	\$1,072,500
Over 2nd Plan Checks (20% original fee)	\$1,072,500.00	\$214,500
After Hour Plan Check Fees (20 hours)	\$120.00	\$9,600
	<b>Subtotal</b>	<b>\$1,300,440</b>

Continued on Next Page

**Exhibit G Page 2 of 2**

<b>Group 2</b>		
<b>Development Impact Fees</b>	<b>Rate</b>	
Sanitary Sewer Frontage (4800 l.f.)	\$100.00	\$480,000
Sanitary Sewer Connection (Residential 292)	\$2,878.98	\$538,706
Sanitary Sewer Connection (Commercial)	Per Formula	\$412,711
Sanitary Sewer Connection (Restaurants-12)	\$8,590.48	\$1,620,610
Water Main Frontage (4800 l.f.)	\$45.00	\$216,000
Water Connection (Residential 292 units)	\$453.00	\$98,574
Water Connection (Commercial)	Scaled Formula	\$50,850
Storm Drain Connection (Mixed Use)	Scaled Formula	\$178,248
Street Trees (300)	\$23.00	\$6,900
Street light (4800 l.f.)	\$28.00	\$134,400
Fire Hydrant (4800 l.f.)	\$8.90	\$42,720
	<b>Subtotal</b>	<b>\$3,779,719</b>
<b>Group 3</b>		
<b>Public Works Deposit</b>	<b>Rate</b>	
Maintenance Cash Deposit (\$750 + 1% of Total Off-site Improvement Costs)-(Improvement Surety Bonds are not included)	Lump sum	\$100,750
	<b>Subtotal</b>	<b>\$100,750</b>
<b>TOTAL</b>		<b>\$16,177,769</b>
Approximate Building Permit fees associated with Target		\$475,000
Approximate Building Permit fees associated with Tenant Improvements		\$825,000
Sewer Connection Fees for Restaurant Tenant Improvements		\$1,620,610
<b>NET TOTAL</b>		<b>\$13,257,159</b>

\*Building fees may be higher with phased development

## Exhibit H

### Minimum Project Schedule for Commencement and Completion of Construction

**EXHIBIT H**  
**MINIMUM PROJECT SCHEDULE**  
**FOR COMMENCEMENT AND COMPLETION OF CONSTRUCTION**

**I. Commencement**

**Office:** (Buildings A and C)

Projected Building C Commencement Date: January 2011

Projected Building A Commencement Date: June 2011

The commencement of office construction shall be not later than the date upon which there are 1) executed leases for 50% of the office square footage as to the applicable office building and 2) acceptable construction financing as required to complete the applicable building (including core, shell, tenant improvements and related onsite and offsite Public Improvements (including parking structures as required for occupancy of the related buildings)).

**Retail:** (Buildings N, H, I, J and L plus retail portions of A, D, E and F)

Projected Commencement Date: June 2011

The commencement of retail construction shall occur upon 1) executed leases for 75% of the retail square footage and 2) acceptable construction financing as required to complete the applicable portion of the retail project (including shell, tenant improvements, related onsite and offsite Public Improvements (including parking structures as required for occupancy of the related buildings), and Redwood Square as to Buildings H, I, J and L).

**Retail-Theater:** (Building T)

Projected Lease Signing Date: October 31, 2010.

Pursuant to 2010 ADDOPA section 3.12, if a theater lease is executed by October 31, 2010, commencement and completion of theater construction will proceed in accordance with the schedule set forth below.

**Residential:** (Buildings D, E and F)

Projected Commencement Date: October 2011

The commencement of construction on the first residential building shall be 1) timed such that its completion will coincide with the grand opening of the retail space and 2) conditioned upon acceptable financing to facilitate the completion and sale of the applicable buildings and related onsite and offsite Public Improvements (including parking structures as required for occupancy of the related buildings).

"Commencement" for the purposes of this Exhibit H means beginning of construction pursuant to an executed construction contract for the applicable building.

## **II. Completion**

Once commenced, all construction shall be Completed in accordance with the following schedule:

### **Office**

- Building C – 9 months to Complete
- Building A – 10 months to Complete

### **Retail**

- Building D Retail – 8 months to Complete
- Building E Retail – 7 months to Complete
- Building F Retail – 7 months to Complete
- Building H, I, J, and L Retail – 9 months to Complete
- Building T (Theater) – 14 months to Complete construction (8 months design/permit in advance of construction)

### **Residential**

- Building D Condos – 11 months to Complete
- Building E Condos – 9 months to Complete
- Building F Condos – 9 months to Complete

### **Parking Structures**

- Parking Facility B – 6 months to Complete
- Parking Facility A – 5 months to Complete

### **Other**

- Redwood Square – 9 months to Complete.  
For the purposes of Redwood Square, "Complete" means completion of improvements in accordance with the landscape and streetscape designs approved by the City on July 9, 2007 under Special Development Permit No. 2007-0516, as amended March 10, 2008 by Special Development Permit No. 2008-0097, sufficient to permit its utilization for its intended use.

Exhibit I

Public Parking Maintenance Agreement

## **EXHIBIT I**

### **FORM OF PUBLIC PARKING MAINTENANCE AGREEMENT [to be updated pursuant to 2010 ADDOPA Section 8.05(d)]**

THIS AGREEMENT (the "Agreement") is made as of \_\_\_\_\_, 2007 (the "Effective Date"), by and between the SUNNYVALE REDEVELOPMENT AGENCY, a public body corporate and politic (the "Agency"), and [Developer] (the "Operator").

#### **W I T N E S S E T H:**

WHEREAS, the Operator and the Agency (the "Agency") have entered into that certain Amended and Restated Owner Participation and Disposition and Development Agreement dated as of \_\_\_\_\_, 2007 (the "DDA"), pursuant to which the Operator has or will construct certain retail, residential, public, and commercial space (the "Development").

WHEREAS, pursuant to the DDA, Operator has constructed certain parking structures and related improvements (the "Parking Facilities") on land owned by the Agency and more particularly described in the attached Exhibit A (the "Public Parking Parcels").

WHEREAS, Operator sold the Parking Facilities to the Agency.

WHEREAS, the Agency, Sun Town Center Properties, a California corporation, and Target Corporation, a Minnesota corporation, have entered into the Operation and Reciprocal Easement Agreement dated \_\_\_\_\_, 2007, which sets forth certain standards regarding the operation and maintenance of the Development (the "OREA").

WHEREAS, the Operator and the Agency have agreed that the Operator shall be responsible for the operation and maintenance of the Public Parking Parcels pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1.     Identification of Public Parking Parcels. This Agreement shall affect the Public Parking Parcels. The Public Parking Parcels are subject to the Public Parking Easement dated \_\_\_\_\_, 2007 and recorded in the Official Records of Santa Clara County as Document No. \_\_\_\_\_ pursuant to which the Agency has granted to the City of Sunnyvale ("City") an easement over the Public Parking Parcels assuring their use for public parking.

Section 2.     Term.

The term (the "Term") of this Agreement shall commence on the Effective Date and shall terminate seventy-five (75) years thereafter, unless earlier terminated pursuant to the terms of this Agreement.



If, as of the date five (5) years before the end of the Term, the Center Property (as defined in the DDA) is/are still in use as a mixed-use project with a substantial retail element, then either party may request in writing of the other party an extension of the Term for at least ten (10) additional years. If such request is made, the parties shall negotiate in good faith for such an extension.

Section 3. Use.

a. Permitted Use. The Premises shall be used, managed and operated by the Operator hereunder to provide parking on a non-exclusive basis for members of the general public and for such other purposes as are compatible and permitted pursuant to the OREA and the Public Parking Easement.

b. Prohibited Uses.

(i) The Operator shall not do or permit to be done in, on or about the Public Parking Parcels, nor bring or keep or permit to be brought or kept therein, anything that is prohibited by any insurance policy for the Public Parking Parcels, or will materially increase the existing rate of, or cause a cancellation of, or affect any insurance for the Public Parking Parcels.

(ii) The Operator agrees not to knowingly use the Public Parking Parcels or permit anything to be done in or about the Public Parking Parcels which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation or requirement of duly constituted public authorities now in force or which may hereafter be enacted or promulgated. Operator agrees promptly to comply with all laws, statutes, ordinances, and governmental rules, regulations, or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use, or occupancy of the Public Parking Parcels, excluding structural changes not relating to or affecting the condition, use, or occupancy of the Public Parking Parcels, or not related to or affected by Operator's improvements or acts.

c. Hazardous Materials

Operator agrees that during the Term of this Agreement, Operator shall not be in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene, soil, water, or environmental conditions on, under or about the Public Parking Parcels including, but not limited to, Hazardous Material Laws.

Operator further agrees that during the Term of this Agreement, there shall be no use, presence, disposal, storage, generation, release, or threatened release of Hazardous Materials on, from or under the Public Parking Parcels in violation of any Hazardous Material Laws.

Except as otherwise provided in the DDA, Operator shall, at its sole cost and expense, be responsible for the removal and/or remediation (as set forth below) of all toxic or hazardous

materials brought upon, maintained or caused to be brought onto the Public Parking Parcels. Remediation shall include both structural and non-structural work and encompass inspection, monitoring, testing, contesting, making safe, removing, and otherwise dealing with toxic or hazardous materials. Further, in the event generation, transportation, storage, release, disposal or use of Hazardous Materials in, on, under or about the Public Parking Parcels results in (a) contamination of the Public Parking Parcels, any soil, subsoil, groundwater, surface water or ambient air, or (b) any loss, injury, damage or contamination of the Public Parking Parcels or any other property or injury or death to any persons, then Operator agrees to respond in accordance with the following. Operator agrees (a) to notify City and Agency immediately of any claim of contamination, contamination, release, loss, injury, damage or death or otherwise, (b) after consultation with and approval by the City and Agency (which approval may be given or withheld in their reasonable discretion), Operator shall, at its sole cost and expense, remove, clean up, repair or revitalize, in full compliance with all Hazardous Material Laws, any resulting contamination, loss, injury, damage or other problem, and (c) to indemnify, defend and hold Agency and City, their board members, officers, agents, servants and employees, harmless for, from and against all resulting claims, suits, actions, causes of action, costs, professional fees, attorneys' fees, liabilities or obligations arising from or connected with any such contamination or loss, injury or damage or otherwise. The provisions of this subsection shall survive termination or expiration of this Agreement and shall continue thereafter.

For the purpose of this Agreement, "Hazardous Materials" means any substance, product, waste, or other material of any nature whatsoever:

which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. section 1801, et seq. ("HMTA"); the Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. section 2601, et seq. ("TSCA"); the Clean Air Act, 42 U.S.C. section 7401, et seq. ("CAA"); the Clean Water Act, 33 U.S.C. section 1251, et seq. ("CWA"); the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. section 136 et seq. ("FIFRA"); the Atomic Energy Act of 1954 ("AEA") and Low-Level Radioactive Waste Policy Act ("LLRWPA"), 42 U.S.C. section 2014 et seq.; the Nuclear Waste Policy Act of 1982, 42 U.S.C. section 10101 et seq. ("NWPA"); the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. section 11001 et seq. ("EPCRA"); the California Hazardous Waste Control Act, Health and Safety Code, Division 20, Chapter 6.5, section 25100 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code, Division 20, Chapter 6.6, section 25249.5 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, Health and Safety Code, Division 20, Chapter 6.8, section 25300 et seq.; California Health and Safety Code, Division 20, Chapter 6.95, section 25501, et seq. ("Hazardous Materials Release Response Plans and Inventory"); or the Porter Cologne Water Quality Control Act, California Water Code section 13000, et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to or imposing liability (including, but not limited to, response, removal and remediation costs) or standards of conduct or performance concerning any hazardous, extremely

hazardous, toxic, dangerous, restricted, or designated waste, substance or material, as now or at any time hereafter may be in effect, or

which is explosive, corrosive, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous to human health or the environment and is regulated by any governmental authority (or by executive or judicial order) as a hazardous material; or

which is or contains oil, gasoline, diesel fuel or other petroleum hydrocarbons; or

which is or contains polychlorinated biphenyls, asbestos, urea formaldehyde foam insulation, radioactive materials; or

which is radon gas.

The term "Hazardous Materials" shall not include the following, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Public Parking Parcels, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

Hazardous Materials Laws means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Public Parking Parcels or any portion thereof.

d. Charges for Use. Operator shall not impose or permit the imposition of any charge for the use of the Public Parking Parcels and Parking Facilities without the consent of the City and Agency.

#### Section 4. Taxes.

a. Payment of Taxes. To the extent that Agency, City or Operator is assessed real or personal property taxes, general and special assessments, or other charges against the Public Parking Parcels or the Parking Facilities or personal property thereon, Operator shall pay such taxes, fees, charges and other governmental impositions prior to delinquency and before any fine, interest or penalty shall become due or be imposed by operations of law for their nonpayment.

b. Prorations. All payments required pursuant to Section 4 shall be prorated on a daily basis for the initial year of this Agreement and for the year in which the Agreement terminates.

c. Proof of Compliance. Operator shall furnish to City and Agency at least twenty (20) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Operator may comply with this requirement by retaining a tax service to notify City and Agency whether taxes have been paid.

Section 5. Repair, Maintenance and Operation. The Operator shall at its own expense, operate, repair and maintain, during the Term of this Agreement, the Public Parking Parcels and the Parking Facilities in good order, condition and repair and shall pay all costs and expenses of any nature whatsoever of operating and replacing the same (including but not limited to the costs of insurance premiums, maintenance, repairs and replacements (whether of a capital or non-capital nature), compliance with legal requirements, compliance with the OREA, all utilities, and all public charges, taxes and assessments of any nature whatsoever), it being understood and agreed that neither City nor Agency shall be under any obligation to pay any cost or expense of any kind or character in connection with or related to the repair, management, operation, maintenance or replacement of the Public Parking Parcels and the Parking Facilities during the Term of this Agreement. The standards of operation and maintenance of the Public Parking Parcels and the Parking Facilities required under this Agreement shall include those operation and maintenance requirements applying to the Public Parking Parcels and the Parking Facilities in the OREA and the standards of the City applicable to other public parking facilities. Operator shall at all times ensure that the provisions of the OREA relating to the operation and maintenance of the Public Parking Parcels and the Parking Facilities are met to the extent that they apply to the Public Parking Parcels and the Parking Facilities. In the event the Operator fails to perform the management, maintenance, repair and operation of the Public Parking Parcels and the Parking Facilities as provided herein or otherwise ensure that the applicable operation and maintenance requirements in the OREA are met, the Agency shall notify Operator in writing of such failure to perform, specifying the respects in which it considers the Operator's performance to be unsatisfactory. Upon the failure of the Operator to improve or to commence and diligently proceed to improve such performance within sixty (60) days after such notice, the Agency shall have the right to undertake or cause to be undertaken such management, maintenance, repair and operational activities in the manner provided in the OREA. In such event, the Operator shall within thirty (30) days upon receipt of written demand reimburse the Agency for all reasonable costs and expenses incurred by the Agency or City for such management, maintenance, repair and operational activities. Agency nor City shall be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Public Parcels or Facilities.

Section 6. Policing. Operator shall provide adequate security and traffic control for the Public Parking Facilities as is necessary to minimize the need of the City to provide routine patrol and traffic control for the Public Parking Parcels and is consistent with the OREA. The Operator and City do expect that the City's public safety department would respond to emergencies, crimes in progress and other similar events that are beyond the scope of a routine patrol or traffic control. In providing for security and traffic control, Operator shall comply with the standards reasonably promulgated by the City's public safety department. Nothing in this section is intended to prevent the City from engaging in any police or security activities it deems

necessary to protect the health, safety or welfare of the City or any person. The parties shall work with the City's public safety department to provide a means for Operator enforcement for minor infractions so as to facilitate Operator's activities under this Section 6.

Section 7. Permits and Licenses.

Operator shall, at its own expense, also be responsible for obtaining and maintaining any and all governmental permits, licenses and approvals necessary or desirable with respect to the Public Parking Parcels.

Section 8. Improvements.

a. Existing Improvements. In accordance with the DDA, the Operator shall demolish, reconstruct, repair or replace any existing improvements on the Public Parking Parcels.

b. By the Operator. In accordance with the DDA, the Operator has constructed the Parking Facilities. The Operator may, upon written approval from the Agency, at the Operator's expense, make any addition to or improvements to the Public Parking Parcels or Parking Facilities which are consistent with the DDA and the OREA and do not impair the utility thereof for public parking use, and place any personal property on or in the Public Parking Parcels. Any such addition shall be performed diligently and in a first-class workmanlike manner by a licensed contractor after obtaining appropriate permits and approvals (including a building permit) from authorized governmental agencies.

c. By the Agency or City. The Agency or City shall have the right during the Term of this Agreement, at its own expense, to make or permit to be made, any addition to or improvements to the Public Parking Parcels which are now or may hereafter be permitted by law, to attach fixtures, structures or signs thereto, and to place any personal property on or in the Public Parking Parcels.

d. Ownership of Improvements. All improvements constructed on the Public Parking Parcels by Operator shall be owned by the Agency. Any additions or alterations to the Parking Facilities shall automatically become part of the Parking Facilities.

Section 9. Policies and Rules. The Operator shall establish and maintain such general policies, rules and regulations for the repair, management, maintenance, operation and use of the Public Parking Parcels consistent with the provisions of this Agreement and the OREA, and the standards of the City applicable to other public parking facilities. Such policies, rules and regulations must be approved by the City and Agency which approval shall not be unreasonably withheld.

Section 10. Easements for Construction and Utilities. Agency grants the Operator the right to grant to public entities or service corporations, for the purpose of serving only the Public Parking Parcels, rights or way or easements on or over the Public Parking Parcels for poles, conduits, or both for telephone, electricity, water, sanitary, or storm sewers or both, and for other

utilities and municipal or special district services. Grants made pursuant to this section shall be limited to the Term of the Agreement.

Section 11. Insurance.

a. Obligations of Operator. During the Term of this Agreement, the Operator shall at its expense, procure, carry, and maintain in full force and effect in a form acceptable to Agency insurance coverage by the following policies of insurance:

- (i) Workers' Compensation Insurance, in accordance with the law;
- (ii) Liability Insurance with a minimum combined single-limit coverage of Five Million Dollars (\$5,000,000) on an occurrence basis and Ten Million (\$10,000,000) combined single limit, arising out of or resulting from: (i) personal injury, death, or property damage sustained or alleged to have been sustained by any person for any reason on the Public Parking Parcels or as a result of business or activity at the Public Parking Parcels; or (ii) personal injury, death, or property damage sustained or alleged to have been sustained by operation, ownership, or use of automobiles, including owned, non-owned, and hired automobiles.
- (iii) Property Insurance insuring the Public Parking Parcels against loss or damage by a standard all risk policy (excluding flood and earthquake if insurance for those risks is not available at a commercially reasonable rate) in amounts such that the proceeds of such insurance shall not be less than the full replacement value of the Parking Facilities, or should insurance in such amount not be commercially reasonably available, such lesser amount as may be acceptable to the City and Agency.
- (iv) Any other insurance required the OREA or reasonably requested the Agency.
- (v) All policies of liability insurance obtained and maintained by Operator in accordance with this section shall name the Agency and the City as additional insureds and shall further provide that the insurance policy so endorsed will be the primary insurance providing coverage for Agency and City.
- (vi) All insurance provided under this section shall: (a) be periodically reviewed by the parties for the purpose of mutually increasing the minimum limits of such insurance, from time to time, to amounts which may be reasonable and customary for similar facilities of like size and operation; and (b) effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California.
- (vii) Operator may use insurance proceeds to fulfill its obligations under Section 12; provided, however, that any proceeds that remain after repair, replacement or reconstruction shall be paid in full to the Agency.

b. Certificates. Certificates of Insurance shall be furnished by Operator to Agency and shall provide that no cancellation, reduction or modification of coverage will occur without thirty (30) days' prior written notice to Agency. In the event Operator does not comply with the requirements of this Section 11, Agency may, at its option, purchase insurance coverage to protect the Agency and the Public Parking Parcels and Operator shall reimburse Agency for all reasonable sums paid by Agency under this section within thirty (30) days after written notice is received from Agency of amount expended. Acceptance of insurance certificates by Agency shall not limit or eliminate the duties or responsibilities of Operator set forth in this Agreement.

c. Waiver of Subrogation. Operator releases Agency and the City from any claims for damage to any person or to the Public Parking Parcels and the building and other improvements in or to the Public Parking Parcels that are caused by or result from risks insured against under any insurance policies carried by Operator and in force at the time of any such damage. Operator shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against Agency or City in connection with any damage covered by any policy.

## Section 12. Damage to the Public Parking Parcels.

a. Damage or Destruction of Improvements. In the event that the Parking Facilities are damaged by fire or other casualty or event during the Term of this Agreement, Operator shall, at Operator's sole cost, within thirty (30) days, commence and diligently pursue to completion the repair, replacement or reconstruction of the Parking Facilities.

b. Damage Near End of Term. Unless the OREA provides otherwise, if at any time during the last six (6) years of the Term there is damage or destruction to the Parking Facilities and the cost to repair such damage makes any repair and restoration economically infeasible as reasonably determined by Operator, Operator may, at Operator's option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Agency of Operator's election to do so within sixty (60) days after the date of occurrence of such damage. In addition, if there is substantial damage or destruction to the Parking Facilities and, under the OREA, neither the Operator, nor the Agency, nor the City has an obligation to repair or replace the Parking Facilities following the damage or destruction, the Operator may, at Operator's option, cancel and terminate this Agreement as of the date of occurrence of such damage by giving written notice to Agency of Operator's election to do so within sixty (60) days after the date of occurrence of such damage.

## Section 13. Assignment of Agreement.

Unless otherwise permitted herein, neither this Agreement nor any interest of the Operator herein shall, at any time after the date hereof, without the prior written consent of the Agency, be transferred. A transfer consists of any of the following, whether voluntary or involuntary and whether effected by death, operation of law or otherwise: (i) any assignment, mortgage, pledge, encumbrance, or other transfer of any interest in this Agreement; (ii) any occupancy of any portion of the Public Parking Parcels by any persons other than Operator and

its employees; and (iii) any changes of ownership in the Operator, including any transfer or fifty percent or more of the interests in Operator including the dissolution, merger, consolidation, or other reorganization of Operator. Notwithstanding the foregoing, the Operator may assign its rights under this Agreement to (i) a Lender (as defined below) as security in accordance with Section 21, and (ii) to an entity that is purchasing all or a substantial portion of the retail improvements in the Development, if such assignment is permitted under the DDA or approved by the City and Agency.

Section 14. Eminent Domain.

If all or part of the Public Parking Parcels shall be taken or appropriated for public or quasi-public use by right of eminent domain with or without litigation or transferred by agreement in connection with a threat of exercise of such a right, either party hereto shall have the right at its option to terminate this Agreement as of the date possession is taken by the condemning authority, provided, however, that before Operator may terminate this Agreement by reason of taking or appropriation, the taking or appropriation shall be of such an extent and nature as to substantially handicap, impede or impair use of the Public Parking Parcels in accordance with this Agreement. No award for any partial or entire taking shall be apportioned, and Operator hereby assigns to Agency any award which may be made in such taking or condemnation, together with any and all rights of Operator now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Agency any interest in or to require Operator to be deemed to give Agency any award made to Operator for the taking of personal property and fixtures belonging to Operator and/or for the interruption of or damage to Operator's business. No temporary taking of the Public Parking Parcels and/or of Operator's rights therein or under this Agreement shall terminate this Agreement or give Operator; any award made to Operator by reason of any such temporary taking shall belong entirely to Operator and Agency shall not be entitled to share therein.

Section 15. Surrender. Upon the termination of this Agreement, the Operator agrees that it shall surrender to the Agency the Public Parking Parcels and Parking Facilities in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance except for reasonable wear and tear, and except for any damage to the Public Parking Parcels and Parking Facilities caused by casualty or by a taking as a result of eminent domain proceedings.

Section 16. Liens. Operator shall promptly pay and discharge all claims for work or labor done, supplies furnished or services rendered at the request of Operator and shall keep the Public Parking Parcels free and clear of all mechanics' and materialmen's liens in connection therewith. The City or Agency shall have the right to post or keep posted on the Public Parking Parcels, or in the immediate vicinity thereof any notices of non-responsibility for any construction, alteration or repair of the Public Parking Parcels by Operator. If any such lien is filed, the City or Agency may, but shall not be required to, upon written notice to Operator, take such action or pay such amount as may be necessary to remove such lien. Operator shall reimburse City or Agency for all reasonable sums paid by City or Agency under this section within thirty (30) days after written notice is received of the amount expended.



Section 17. Law Governing. This Agreement shall be governed by the laws of the State of California, subject to the waivers, exclusions and provisions herein contained.

Section 18. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

Agency	City of Sunnyvale P.O. Box 3707 456 West Olive Avenue Sunnyvale, California 94088-3707 Attention: Executive Director
Operator	Downtown Sunnyvale Mixed Use, LLC c/o RREEF America REIT III, Inc. 101 California Street, 26th Floor San Francisco, California 94111 Attn: David Wilbur Telephone: (415) 262-7716 Facsimile: (415) 986-6247
With a copy to	Sand Hill Property Company c/o Peter Pau Jeff Warmoth 489 South El Camino Real San Mateo, California 94402 Telephone: (650) 344-1500 Facsimile: (650) 344-0652

or at such other address as either party shall later designate for such purpose by written notice to the other party.

Section 19. Waiver. The waiver by either party of any breach by the other of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 20. Default by Operator. If (a) the Operator shall fail to observe or perform any term, covenant or condition contained herein for a period of sixty (60) days after written notice thereof from the City to the Operator, or (b) the Operator shall abandon or vacate the Public Parking Parcels, or (c) the Operator's interest in this Agreement or any part hereof shall be assigned or transferred without the written consent of the City, either voluntarily or by operation of law, or (d) the Operator shall file any petition or institute any proceedings wherein or whereby the Operator asks or seeks or prays to be adjudicated a bankrupt, or to be discharged from any or all of its debts or obligations, or offers to the Operator's creditors to effect a composition or

extension of time to pay the Operator's debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the Operator's debts, or for any other similar relief, then and in any of such events, the Operator shall be deemed to be in default hereunder.

If the Operator should, after notice of such default, fail to remedy any default or commence the correction thereof within sixty (60) days after such notice, or thereafter fails to diligently pursue such correction to completion, then the City shall have the right, at its option, without any further demand or notice:

(i) to terminate this Agreement and, in which case this Agreement shall terminate, and the Operator shall have no further rights or claim hereunder; or

(ii) to continue this Agreement in effect, in which case it may enforce all of its rights and remedies hereunder.

In the event the Agency terminates this Agreement as hereinabove provided, the Agency shall be entitled to pursue all rights and remedies available at law or in equity.

The foregoing remedies of the Agency are in addition to and not exclusive of any other remedy of the Agency. Upon termination, the Operator shall not hinder the Agency or its designee in taking over operation of the Public Parking Parcels and Parking Facilities.

#### Section 21. Financing.

a. Operator shall have the right at any time and from time to time to assign this Agreement to the holder of one or more mortgages required for any reasonable and customary method of construction or permanent financing of the Development without the Agency's consent, provided that:

(i) The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Agreement and to all rights and interests of Agency except as provided in this Agreement.

(ii) Operator shall give Agency prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.

b. Agency shall give any lender, who so requests in writing, an opportunity to cure failures or conditions specified in the Agency's notice of default provided pursuant to Section 20 which cure period shall be coterminous with the one provided to Operator plus such additional time as is reasonably necessary to allow the lender to gain possession of the Operator's rights under this Agreement.

c. The documents evidencing the lender's loan to Operator shall provide that any proceeds from fire or extended coverage insurance for the Parking Facilities shall be used for repair or rebuilding of the Parking Facilities and not to repay part of the outstanding mortgage.

d. The documents evidencing lender's loan to Operator shall contain provisions that all notices of default under the note and mortgage must be sent to Agency and Operator and that Agency shall have the right to cure any default if Operator fails to do so. Agency shall have sixty (60) days in which to cure any default if Operator fails to do so. Neither Agency's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or mortgage. If any default is noncurable, it shall not be grounds for foreclosure of the mortgage if City, or Operator in possession of the Public Parking Parcels promptly performs all other provisions of the note and mortgage.

e. On the recording of lender's deed of trust or deeds of trust, Operator shall at Operator's expense, cause to be recorded in the office of the county recorder in Santa Clara County, California, a written request executed and acknowledged by Agency for a copy of all notices of default and all notices of sale under the deed of trust as provided under California Law. Inclusion in the body of lender's deed of trust or deeds of trust of a request for notice having the effect described above shall constitute compliance with this provision.

f. Lender shall not be liable to perform Operator's obligations under this Agreement until the lender acquires Operator's rights by foreclosure. After acquiring Operator's rights by foreclosure, lender shall be liable to perform Operator's obligations only until lender assigns or transfers the Agreement as permitted in Section 13. Lender shall not, however be required to cure Operator's defaults occurring before lender's acquisition of Operator's rights by foreclosure.

Section 22: No Release of Operator. Consent by Agency to any assignment or transfer by Operator shall not relieve Operator of any obligation to be performed by Operator under this Agreement, whether occurring before or after such consent or assignment, unless the Agency approves such assignment, and the assignee assumes in writing all obligations of the Operator under this Agreement and the DDA and Agency approves the form of the written assignment. The consent by Agency to any assignment shall not relieve Operator from the obligation to obtain Agency's express written consent to any other assignment or except as herein provided. The acceptance of payment by Agency from any other person shall not be deemed to be a waiver by Agency of any provision of this Agreement or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, or other transfer shall not be deemed to constitute consent to any subsequent assignment or other transfer.

Section 23. Assignment by Agency. The Agency shall have the right to transfer and assign, in whole or in part, all its rights and obligations under this Agreement and in the Public Parking Parcels without the consent of Operator.

Section 24. Nondiscrimination. The Operator covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that this Agreement is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, national origin, or ancestry, in the leasing, subleasing, transferring, use, or enjoyment of the Public Parking Parcels herein operated nor shall the Operator itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy, of Operators, lessees, sublessees, sub-Operators, or vendees in the Public Parking Parcels herein operated.

The foregoing conditions shall not create any rights in Operator that are not otherwise expressly set forth herein.

Section 25. Indemnification. The Agency and City shall not be liable at any time for any loss, damage, or injury to the property or person of any person whomsoever at any time occasioned by or arising out of any act or omission of the Operator, or of anyone holding under the Operator or the occupancy or use of the Public Parking Parcels or any part thereof by or under the Operator, or directly or indirectly from any state or condition of the Public Parking Parcels or any part thereof during the Term of this Agreement except for the willful misconduct or the gross negligence of the City or the Agency.

Notwithstanding anything to the contrary under this Agreement, and irrespective of any insurance carried by the Operator for the benefit of the Agency and City, the Operator agrees to protect, defend, indemnify and hold the Agency and City and the Public Parking Parcels harmless from any and all damages or liabilities of whatsoever nature arising under the terms of this Agreement or arising out of or in connection with the Public Parking Parcels during the Term of this Agreement.

The foregoing indemnity shall survive termination of this Agreement. The foregoing indemnity shall not apply to: (i) any claim for injury to person or property arising from the gross negligence or willful misconduct of the Agency or City or their respective officers, employees, agents or contractors; (ii) to any claim that arises solely by reason of the actions or omissions of an unrelated third party or in connection with the Public Parking Parcels; or (iii) any claim that arises solely by reason of the design of the improvements on the Public Parking Parcels to the extent that the design has been approved by the City and the design element is one normally approved by the City for public facilities. An "unrelated third party" is a person or entity who is not directly or indirectly an employee, officer, agent, representative, tenant, contractor or subcontractor of the Operator.

Section 26. Certain Covenants of the Operator. Without limiting Operator's other obligations hereunder, Operator shall not do, or permit or authorize others to do any of the following:

- a. Operate or use the Public Parking Parcels in any manner or for any purposes other than as herein set forth;
- b. Knowingly or intentionally engage in any act which would, to an ordinarily prudent person in the position of Operator, be reasonably foreseeable to cause material damage to the Public Parking Parcels;
- c. Abandon the Public Parking Parcels during the Term of this Agreement;
- d. Knowingly use or occupy, or knowingly permit the Public Parking Parcels or any part thereof to be used or occupied, for any unlawful, disreputable or ultra-hazardous use (including the prohibited or unauthorized use, storage or disposal of hazardous material), or operate or conduct the business of the Public Parking Parcels in any manner known to constitute or give rise to a nuisance of any kind;
- e. Make, authorize or permit any material modifications or alterations to the Public Parking Parcels except as expressly authorized by this Agreement;
- f. Do anything inconsistent with, or that will cause a default under the OREA; or
- g. Enter into or amend any contract or agreement affecting the Public Parking Parcels that conflicts in any material respect with the terms of this Agreement or that does not contain an express provision that it will terminate automatically upon the expiration or earlier termination of this Agreement.

Section 27. Attorneys' Fees and Court Costs. In the event that either the Agency or the Operator shall bring or commence an action to enforce the terms and conditions of this Agreement or to obtain damages against the other party arising from any default under or violation of this Agreement, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

Section 28. Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement, and it is also understood and agreed that separate counterparts of this Agreement may be separately executed by the City and the Operator, all with the same force and effect as though the same counterpart had been executed simultaneously by both the Agency and the Operator.

Section 29. Validity. If any one or more of the terms, provisions, promises, covenants, conditions or option provisions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, conditions and option provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

Section 30. Binding Effect. This Agreement, and the terms, provisions, promises, covenants, conditions and option provisions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

Section 31. No Lease. This Agreement (i) is not a lease and does not grant Operator any real property rights in the Public Parking Parcels, and (ii) shall not make Operator an agent for the Agency or City.

Section 32. Estoppel Certificate. Within ten (10) days after delivery of a written request from the Agency to the Operator, the Operator shall execute and deliver to the Agency an estoppel certificate certifying as to such facts with regard to this Agreement and the Public Parking Parcels as the Agency may reasonably request from time to time.

Section 33. Conflict. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of the OREA, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

SUNNYVALE REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Agency Secretary

DEVELOPER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**Legal Description Public Parking Parcels**